*The Hon'ble Sri Justice V.V.S.RAO

+Writ Petition No.12659 of 2002

% 15.11.2005

£ Ashok Kumar Agarwal S/o. Harikishan Agarwal, R/O. 1-5-6/33,
1st Floor, Sri Krishna COLONY, Musheerabad, Hyderabad-500 020.

**..... PETITIONER**

AND

$ 1. Hyderabad Metropolitan Water Supply and Sewerage Board
Rep.by its Managing Director, Khairtabad Hyderabad-500 004
2 Chief General Manger, Hyderabad Metropolitan Water Supply and Sewerage Board, Malakunta Road, Gosha Mahal, Hyderabad-500 012
3 General Manger, O & M, Division No.5 Hyderabad Metropolitan Water Supply and Sewerage Board, Narayanaguda, Hyderabad
4 Shri Aswani Kumar, A/c. General Manager Hyderabad Metropolitan Water Supply and Sewerage Board, Narayanaguda, Hyderabad
5 Sri Krishna Rao Keshav S/o. Narayana, R/o. 1-5-6/33, Ground Floor, Sri Krishna Colony, Musheerabad, Hyderabad-20
6 Smt.K.Vijaya W/o. Krishna Rao Keshav, R/o.6-1-101, Padmaraonagar, Secunderabad.
7 Ramana M. S/o. M.V.Chalem, R/o. Padmaraonagar, Secunderabad.
8 Smt K.Jhansi Rani D/o. K.R.Ramaiah, R/o. Vijayanagar Colony, Hyderabad.
R6 to 8 are impleaded as per court order in WPMP 29034/02 Dt.5.12.2002

**.....RESPONDENTS**

! For the petitioner …Mr. J.Prabhakar

^ For the Respondent Nos.1 to 3 … Ms.M.Venkateswari, S.C.

For the Respondent No.4 … Mr.G.Dhanunjay (Not appeared)

For the Respondent Nos.5 to 8 … None appeared

<Gist:

>Head Notes:

? Cases Referred

1. AIR 1996 SC 2992

2. (2000) 10 SCC 664

3. (2001) 2 SCC 62

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.12659 of 2002

15.11.2005

Between:

Ashok Kumar Agarwal S/o. Harikishan Agarwal, R/O. 1-5-6/33,
1st Floor, Sri Krishna COLONY, Musheerabad, Hyderabad-500 020.

... Petitioner

AND

1. Hyderabad Metropolitan Water Supply and Sewerage Board
Rep. by its Managing Director, Khairtabad Hyderabad-500 004

and others

... Respondents

**THE HON'BLE SRI JUSTICE V.V.S.RAO**

WRIT PETITION No.12659 of 2002

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents 1 to 3 in disconnecting water supply connection under Account No.052135509 in premises No.1-5-6/33/1, Sri Krishna Colony, Musheerabad, Hyderabad (hereafter called, petition premises) on 09.7.2002 as illegal and arbitrary and for a consequential direction to respondents to reconnect water supply connection to the premises.

The fact of the matter is not much in dispute. The petitioner entered into agreement with the owners of plot Nos.33, 34 and 35 – respondents 6 to 8 herein, for construction of apartment block. A firm in the name and style of M/s.United Builders was constituted on 15.5.1985. The partnership deed however was superseded by another deed. While the construction was at advanced stage, disputes arose between the petitioner and respondents 6 to 8 (other partners of the firm). This lead to respondents 6 to 8 filing a suit being O.S.No.1482 of 1984 for dissolution of the

firm and accounts. The said dispute is now pending before this Court in C.C.C.A. No.323 of 2003. However, there is no necessity to afford further details in this regard.

In 1990, the petitioner herein occupied a built-up portion in the first floor and applied to the first respondent for water supply connection. Having been satisfied with the formalities complied with by the petitioner water supply connection was given. The petitioner was availing water supply and paying the bills regularly. On 29.5.2002, the third respondent, who is also arrayed as respondent in his personal capacity, issued a notice to the petitioner directing to submit ownership documents pertaining to the petition premises on the ground that petitioner is not the real owner of the premises as per the petition filed before water adalat in L.S.A. No.108 of 2002. The petitioner immediately submitted documents on 10.6.2002. However, through a letter dated 29.6.2002, which was received by the petitioner on 08.7.2002, the third respondent again advised the petitioner to submit certified documents and also informed that if the petitioner fails to do so, water supply will be disconnected. The petitioner submitted a letter on 09.7.2002 requesting two weeks time to obtain certified copies from the civil court. On the same day, water supply was disconnected and therefore, the present writ petition is filed.

In the counter affidavit filed on behalf of respondents 1 and 2, and in the counter affidavit filed on behalf of third respondent, it is stated that the action was taken by the Hyderabad Metropolitan Water Supply & Sewage Board (the Board, for brevity) in accordance with the written instructions given by Officer in-charge for that day (General Manager, Revenue) on behalf of Lok Adalat. Based on which, water supply was disconnected on 09.7.2002. It is also stated that case was filed before Lok Adalat by the fifth respondent in L.S.A.No.108 of 2002 alleging that the petitioner is not the real owner of the petition premises.

Though the fourth respondent is represented by Sri G.Dhanunjay, Advocate, no counter affidavit is filed and on 11.11.2005 when the case was heard initially as well as today i.e., 15.11.2005, Sri G.Dhanunjay, is absent and there is no representation. The petitioner herein filed reply affidavit, but a detailed reference to the same is not necessary.

The learned Counsel for the petitioner, Sri J.Prabhakar, raised two contentions. He would first submit that in the facts and circumstances of the case, the Board has no power or jurisdiction to disconnect water supply and secondly, he would urge that the disconnection effected by the Board is violative of principles of natural justice. He also submits that right to water is a basic human right under Article 21 of the Constitution of India and the same cannot be denied to the petitioner, even if he is not the owner or there is a dispute regarding ownership. Reliance is placed on the decisions in **Delhi Water Supply & Sewage Disposal Undertaking v. State of Haryana**, **Narmada Bachao Andolan v. Union of India** and **A.P.Pollution Control Board II v. M.V.Nayudu**.

Ms.M.Venkateswari, learned Standing Counsel for the Board has placed the relevant file before this Court. She would urge that complaints were received from the fifth respondent as a President of Cine Guild Co-operative Housing Society

Limited alleging that the petitioner is not the owner of the petition premises and fifth respondent filed L.S.A. No.108 of 2002 in which a direction was given to the Board to take necessary action by reason of which water supply was disconnected. She submits that as per the relevant procedure, a person applying for water supply connection was to enclose a copy of the title deed or produce a copy of 'No Objection Certificate' given by the owner and in this case, the petitioner has not produced these documents.

Before considering the points that arise for consideration, it is appropriate to make observations in brief regarding the right to water. Drinking is the most beneficial use of water and such use of water is paramount and the same cannot be made sub-servient to any other use of water like irrigation. This was accepted by the Supreme Court in **Delhi Water Supply & Sewage Disposal Undertaking v. State of Haryana** (supra). The relevant observations are as under.

> "Drinking water is of primary importance in any country. In fact, India is a party to the resolution of the UNO passed during the United Nations Water Conference in 1977 as under: "All people, whatever their stage of development and their social and economic conditions, have the right to have access to *drinking water* in quantum and of a quality equal to their basic needs." Thus, the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens……. Adverting to the above right declared in the aforesaid Resolution, in Narmada Bachao Andolan v. Union of India (Scale at p.124: SCC p.767, para 248) Kirpal, J. observed: "248. Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India ……."

In **A.P.Pollution Control Board II v. M.V.Nayudu** (supra), making reference to the earlier case in **Narmada Bachao Andolan v. Union of India** (supra), the Supreme Court made the following observations.

> "The learned counsel took pains to bring to our notice by referring to some decisions of the American Court, as well as to some writings, that drinking is the most beneficial use of water and this need is so paramount that it cannot be made sub-servient to any other use of water, like irrigation. So, the right to use of water for domestic purpose would prevail over other needs. It is because of this that it was contended that what has been stated in Article 262 of the Constitution dealing with adjudication of disputes relating to waters of inter-State river valleys, read with Inter-State Water Disputes Act, 1956, could not exclude the jurisdiction of this Court to entertain the grievances of the petitioner ……. Shri Venugopal – in support of his contentions – relied upon high authorities of State of Connecticut v. Commonwealth of Massachusetts, (1930) 75 Law Ed.602; American Jurisprudence, Vol.78, 2d p.293; and C.D. Harris v. John Brooks, 54 American Law Reports 2d series p.1440. We found plausibility in the contentions and were inclined to unfold new jurisprudential arena, despite strong objection to the same being taken by the State of Haryana……."

As it reveals presently, the A.P. Legislature while enacting Hyderabad Metropolitan Water Supply & Sewerage Board Act, 1989 (the Act, for short) has taken due care to give effect the right to water. The Act does not make any distinction insofar as the duty of the Board to supply water for drinking purpose either to owners or occupiers

of the premises. The first point that falls for consideration centers round this. Whether the Board can deny water supply to an applicant on the ground that he is not the owner of the premises? The answer to this question would be in the negative. Whether a person is an owner/tenant/licencee of the premises, the urge to quench thirst to survive is uniform in all these categories of persons. The Board cannot deny water supply on the ground that a person is not the owner of the premises or the title of the person is in dispute at the behest of other rival claimants. Section 23 of the Act reads as under.

> **Water supply for domestic consumption:-** (1) The Public Health Engineer in charge of water supply may, on application by the owner or occupier of any building, arrange, in accordance with the rules and regulations, to supply water thereto for domestic consumption and use.
>
> (2) It shall not be lawful for the owner of any dwelling house which may be constructed or reconstructed after coming into force of this Act to demand water supply from the Board unless he has obtained a certificate in the prescribed manner from the Board that there is provided within or within a reasonable distance of the house such supply of whose some water as appears to the Board to be sufficient for the domestic consumption and use of the inmates of the house.
>
> (3) Where on any land there are two or more superstructures, and the owner of the land is not the owner of all the superstructures, the Board may, if it appears to it that the superstructures are without a proper supply of water for domestic consumption and use and that such supply can be furnished from the main not more than thirty-five meters distance from any part of any such superstructure, by notice, require the owner of the land to obtain such supply.

A plain reading of the above provision leaves no doubt that any owner or occupier of any building can apply to the Board to arrange water supply and it shall be the duty of the Board to supply water. Precisely, for this reason, Section 42 of the Act empowers the Board to cut-off water supply even when an occupier neglects to pay the water bills and neglects to comply with any lawful order issued by the Board. Even when an action is initiated by the Board to cut-off to supply water from any premises, the procedure contemplated has to be followed. The proviso to subsection (1) of Section 42 of the Act makes it mandatory to the Board to issue notice of not less than seven (7) days to the owner/occupier before cutting off supply of water to such premises in the case of default in payment of charges or negligence in complying with the lawful orders of the Board.

A perusal of the file would show that when the fifth respondent gave a complaint before Water Lok Adalat, the concerned General Manager directed the Manager of Musheerabad area of the Board to submit a status report. The status report was submitted, which is found at page 15 of the file produced before this Court. The same would show that the dispute of the water is to be settled by other authorities and the Board is no way concerned with the property dispute since existing

connection is 12 years old and payment of water bills is regular. The Manager also reported that the petitioner is paying the bills regularly but in spite of the same, without notice, the water supply was disconnected, which is illegal and violates the fundamental right of the petitioner for water under Article 21 of Constitution of India.

Indeed, as rightly contended by the learned Counsel for the petitioner, the file does not disclose that any notice was issued by the Lok Adalat or the third respondent before disconnecting water supply on 09.7.2002. Further a statement is made in the counter affidavit that on routine instructions from the General Manager (Revenue), as per the orders of Lok Adalat, water supply is disconnected, is without any foundation. The proceeding sheet of L.S.A.No.108 of 2002, which is found at page No.1 of the file, would show that on 07.9.2002 only the Lok Adalat gave liberty to the Board to take action as per the rules and there is no order passed earlier. This would certainly justify the contention of the petitioner that the fourth respondent acted *mala fidely*. In the absence of any counter affidavit by the fourth respondent, the allegation goes without any challenge and this Court has to draw an inference that the fourth respondent, General Manager of the Board, who ordered disconnection of water supply, acted contrary to the orders of the Water Lok Adalat and also contrary to the provisions of the Act. In view of this, this Court is of considered opinion that the fourth respondent should be mulcted with exemplary costs for denying the right of the petitioner to get drinking water for few days.

The writ petition is, accordingly, allowed with exemplary costs quantified at Rs.10,000/- (Rupees Ten thousand only) to be paid by the fourth respondent personally without any burden to H.M.W.S.S.Board.

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November 15, 2005. (**V.V.S.RAO,J**)

**L.R. Copy be marked.**

NOTE:

Dispatch copy of the order

by 18.11.2005.

(Bo)

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To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1. Hyderabad Metropolitan Water Supply and Sewerage Board
Rep.by its Managing Director, Khairtabad Hyderabad-500 004.
2. Chief General Manger Hyderabad Metropolitan Water Supply and
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3. General Manger, O & M, Division No.5 Hyderabad Metropolitan Water
Supply and Sewerage Board, Narayanaguda, Hyderabad.
4. Shri Aswani Kumar, A/c. General Manager, Hyderabad Metropolitan
Water Supply and Sewerage Board, Narayanaguda, Hyderabad.

5. The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

6. The Secretary, A.P.Advocates Association Library, High Court

Buildings, Hyderabad.

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